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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,230	02/03/2006	Gordon Bell	70257	9450

26748 7590 05/13/2009

SYNGENTA CROP PROTECTION , INC.
PATENT AND TRADEMARK DEPARTMENT
410 SWING ROAD
GREENSBORO, NC 27409

EXAMINER	
PRYOR, ALTON NATHANIEL	

ART UNIT	PAPER NUMBER
1616	

NOTIFICATION DATE	DELIVERY MODE
05/13/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

department-gso.patent@syngenta.com

Office Action Summary	Application No.	Applicant(s)	
	10/567,230	BELL ET AL.	
	Examiner	Art Unit	
	ALTON N. PRYOR	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 February 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14,16 and 17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14,16 and 17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's arguments filed 2/10/06 and 12/29/08 have been fully considered but they are not persuasive. Previous rejections not addressed below are withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5,9,10,12,16 are rejected under 35 U.S.C. 102(b) as being anticipated by Aven (EP 1023832; 8/2/00). Aven teaches an aqueous, concentrate suspension comprising an alkylpolyglycosides (oil based adjuvant), a hydrotrope and dispersants. See paragraphs 31,45 and 46. Aven teaches that the concentrate can comprise approximately 25% adjuvant (calculated from the addition of (g/L): 400 active, 500 adjuvant, 100 surfactant, and 800; then divided total value into 500 g/L adjuvant to arrive at about 25% adjuvant). See abstract. A suspension equates to dispersion of active particles (solid) in a liquid which meets the limitation of second phase (solid) being dispersed in a continuous phase. See abstract, paragraph 53. Aven also teaches the addition of a liquid active ingredient to the composition which meets the claim limitation of the second phase comprising a water-immiscible liquid. See paragraph 26. With respect to claim 12 the composition in about 25% oil based adjuvant meets the limitation of the oil base adjuvant comprising a dispersed agrochemical concentrate therein.

Response to Applicants Arguments

The Applicants argue that Aven does not motivate a skill person to replace water soluble APGs with an oil based adjuvant. The Examiner argues that alkylpolyglycosides (APGs) such as Glucopons (polymeric structure) are combined with hydrotropes. Glucopons are not water soluble; therefore, Glucopons are structurally considered lipophilic or hydrophobic which would characterize them as being oil soluble or oil-based compounds. See Aven page 5 lines 26-28.

The Applicants argue that although Aven teaches a combination of APGs such as Glucopons with hydrotropes, Aven does not teach the use of Glucopons that are oil based as claimed. In fact Applicants points out that Aven teaches Glucopon 215CSUP (C8/10 alkyl) and Glucopon 600CSUP (C12/14 alkyl) which are both water soluble as opposed to oil soluble. Note instant claims would require oil based Glucopons. The Applicants use the Hill et al. reference to point out that C16 and longer alkyl chains give water insoluble APGs (Glucopons), and therefore, by deduction the Hill et al. reference teaches that shorter chains such as C8/C10 and C12/C14 attached to the Glucopons would render the shorter chained Glucopons taught by Aven water soluble. The Examiner agrees with the Applicants in terms of the water solubility of Aven's exemplified Glucopon 215CSUP (C8/10 alkyl) and Glucopon 600CSUP (C12/14 alkyl). However, the Examiner would like to point out that Aven is not limited to the short alkyl chained Glucopons. In fact, it is important to note that Aven at paragraph 31 teaches APGs having alkyl chains ranging from C8 to C18, and therefore, Aven does teaches the use of C16 and longer alkyl chained Glucopons which are water insoluble according to the Hill et al reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6,13-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aven (EP 1023832) as applied to claims 1-5,9,10 above. Aven teaches that the suspension concentrates are processed by well established procedures including mixing and / or milling of actives with other substances such as solvents and adjuvants. See paragraphs 53,63,64 . Aven teaches that the concentrate can be diluted in water. See paragraph 6. Aven does not specifically teach a) that the continuous phase is prepared first, b) the milling of the solid in water, c) the dilution of the concentrate in a spray tank of water or encapsulation of ingredients (the second phase). The specification does not provide results related to the formulation of the continuous phase first versus the methodology as recited in Aven. In the absence of such results, it is obvious that the ordering of the steps will yield the same concentrate (possessing the same chemical and physical characteristics) since Aven and instant invention teaches the mixing / milling of the same chemicals. Both inventions disclose that the concentrate is diluted in water. Therefore whether the concentrate is diluted in spray tank or in some container is immaterial, i.e. the composition should be the same. In the absence of unexpected results, the concentrate diluted in the spray tank should be identical to the concentrate diluted in any other container. With respect to micro-encapsulation (encapsulation), it is standard practice to encapsulate materials to

delay their release. This signifies a common practice in the herbicide art. There is nothing unobvious about encapsulating materials in the herbicide art. (e.g. see USPN 5708073).

Response to Applicants' Argument

The Applicants argue that Aven does not motivate a skill person to replace water soluble APGs with an oil based adjuvant. The Examiner argues that alkylpolyglycosides (APGs) such as Glucopons (polymeric structure) are combined with hydrotropes. Glucopons are not water soluble; therefore, Glucopons are structurally considered lipophilic or hydrophobic which would characterize them as being oil soluble or oil-based compounds. See Aven page 5 lines 26-28.

The Applicants argue that although Aven teaches a combination of APGs such as Glucopons with hydrotropes, Aven does not teach the use of Glucopons that are oil based as claimed. In fact Applicants points out that Aven teaches Glucopon 215CSUP (C8/10 alkyl) and Glucopon 600CSUP (C12/14 alkyl) which are both water soluble as opposed to oil soluble. Note instant claims would require oil based Glucopons. The Applicants use the Hill et al. reference to point out that C16 and longer alkyl chains give water insoluble APGs (Glucopons), and therefore, by deduction the Hill et al. reference teaches that shorter chains such as C8/C10 and C12/C14 attached to the Glucopons would render the shorter chained Glucopons taught by Aven water soluble. The Examiner agrees with the Applicants in terms of the water solubility of Aven's exemplified Glucopon 215CSUP (C8/10 alkyl) and Glucopon 600CSUP (C12/14 alkyl). However, the Examiner would like to point out that Aven is not limited to the short alkyl chained Glucopons. In fact, it is important to note that Aven at paragraph 31 teaches APGs having alkyl chains ranging from C8 to C18, and therefore, Aven does teaches the use of C16 and longer alkyl chained Glucopons which are water insoluble according to the Hill et al reference.

Claims 1-6,9,10,12-14,16,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aven (EP 1023832). Aven teaches an aqueous, concentrate suspension comprising C8 to C16 alkylpolyglycosides such as Glucopons (oil based adjuvant) and a hydrotrope. See page 5 paragraph 31. Aven teaches that the concentrate can comprise approximately 25% adjuvant (calculated from the addition of (g/L): 400 active, 500 adjuvant, 100 surfactant, and 800; then divided total value into 500 g/L adjuvant to arrive at about 25% adjuvant). See abstract. A suspension equates to dispersion of active particles (solid) in a liquid which meets the limitation of second phase (solid) being dispersed in a continuous phase. See abstract, paragraph 53. Aven also teaches the addition of a liquid active ingredient to the composition which meets the claim limitation of the second phase comprising a water-immiscible liquid. See paragraph 26. With respect to claim 12 the composition in about 25% oil based adjuvant meets the limitation of the oil base adjuvant comprising a dispersed agrochemical concentrate therein. Aven teaches that the suspension concentrates are processed by well established procedures including mixing and / or milling of actives with other substances such as solvents and adjuvants. See paragraphs 53,63,64. Aven teaches that the concentrate can be diluted in water. See paragraph 6. Aven does not specifically teach a) a suspension concentrate comprising C16/18 Glucopons b) that the continuous phase is prepared first, c) the milling of the solid in water, d) the dilution of the concentrate in a spray tank of water or encapsulation of ingredients (the second phase). One would have been motivated to employ a C16/C18 Glucopon in the concentrate. One would have been expected to do this, because Aven makes the suggestion in paragraph 31 (Note, Hill et al teaches that C16/18 are water insoluble). The specification does not provide results related to the formulation of the continuous phase first versus the methodology as recited in Aven. In the

absence of such results, it is obvious that the ordering of the steps will yield the same concentrate (possessing the same chemical and physical characteristics) since Aven and instant invention teaches the mixing / milling of the same chemicals. Both inventions disclose that the concentrate is diluted in water. Therefore whether the concentrate is diluted in spray tank or in some container is immaterial, i.e. the composition should be the same. In the absence of unexpected results, the concentrate diluted in the spray tank should be identical to the concentrate diluted in any other container. With respect to micro-encapsulation (encapsulation), it is standard practice to encapsulate materials to delay their release. This signifies a common practice in the herbicide art. There is nothing unobvious about encapsulating materials in the herbicide art. (e.g. see USPN 5708073).

Claim Objection

Claims 7,8 and 11 remain objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior does not teach or suggest the instant invention comprising the second phase as a micro-emulsion or a third phase.

Other Matters

IDS has incorrect serial number (10/567,320) instead of correct serial number (10/567,230). After corrected, the IDS will be acknowledged.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616